

Date: April 8, 1991

To: Nursing Homes

NH 9

From: Larry Tainter, Director
Bureau of Quality Assurance

Subject: Intrafacility Transfers

Sections 4007 and 4801 of the Omnibus Budget Reconciliation Act of 1990 amended the Social Security Act by creating a new resident right, which is the right to refuse a transfer to another room within a facility without jeopardizing the resident's eligibility or entitlement under Medicare or Medical Assistance. The statutory references for the change in the law are as follows: Section 1819(c)(1)(A) (42 USC 1395i3(c)(1)(A) as amended, and Section 1919(c)(1)(A) (42 USC 1396r(c)(1)(A) as amended.

As a result of these changes in the law, the Bureau of Quality Compliance (BQC) is using this memo to clarify certain issues regarding intrafacility transfers.

1. Residents have the right to refuse transfer to or from a Medicare bed. They can voluntarily transfer if they so choose; however, the consent must be clearly documented.
2. Proposed transfers to or from a Medicare distinct part require a 30-day notice.
3. Statements in admission agreements, indicating a resident agrees to move out of the Medicare distinct part upon exhaustion of Medicare benefits, are not valid, and do not constitute informed consent regarding voluntary transfers.

The Bureau had previously advised facilities that this type of provision in an admission agreement was acceptable. The change in the law means this is no longer an acceptable way to handle the situation of a Medicare beneficiary in a Medicare distinct part who exhausts benefits under Medicare.

The federal regulations at 483.12 covering admission, transfer and discharge rights are intended to cover all transfers across distinct parts as well as transfers from one institutional setting to another. Both the Social Security Act and Wisconsin Statutes also provide that effective October 1, 1990 the resident has a right to appeal an involuntary transfer or discharge. Notices to residents about proposed transfers or discharges must include information about how to appeal an involuntary transfer or discharge, as well as the name, address and telephone number of the State Long Term Care Ombudsman, and if appropriate, how to contact the Wisconsin Coalition for Advocacy, which is the agency in Wisconsin responsible for the protection and advocacy of developmentally disabled and mentally ill individuals.

BQC is promulgating a change to HSS 132 to provide for a mechanism for handling appeals from residents regarding involuntary transfer or discharge. We expect the rule to be in effect June 1, 1991. In the meantime, please direct inquiries about this provision to the Field Operations Manager responsible for your facility. Notices to residents about transfer or discharge should advise them to contact BQC if they wish to file an appeal. BQC will review the reason for the proposed transfer and discharge to determine if it meets the regulatory requirements. A written opinion will be issued to both the resident and the facility and

include a notice of appeal rights to the Office of Administrative Hearings. If the BQC determination is that there is a violation of state or federal requirements, appropriate statements of deficiency will also be issued.

If you have any questions regarding transfer and discharge rights, please contact Jerome M. Cabala, MSW, Social Services Specialist at 608-266-8482.

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cc:

- Board on Aging and Long Term Care
- Wis. Assoc. of Homes and Services for the Aging
- Wis. Association of Nursing Homes
- Wisconsin Counties Association
- Wisconsin Medical Records Assoc. Consultants Committee
- Service Employees International Union, Local 150
- Wisconsin Coalition for Advocacy
- Committee on Aging, Extended Care Facilities & Home Health Care
- Wis. Assoc. of Medical Directors (SMS)
- George F. MacKenzie
- Kevin Piper, BHCF Dir.
- Jerry Born, Div. of Care and Treatment Facilities Administrator
- Jerry Sandlin, HCFA, Region V
- Wisconsin Association of Hospital SW and Discharge Planners